SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 491

Office-Supreme Court, U.S.
FILED
OCT 2 0 1966
JOHN F. DAVIS, CLERK

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK and TOWN OF SOUTHAMPTON, TOWN OF EAST HAMPTON, TOWN OF RIVERHEAD, TOWN OF SOUTHOLD and TOWN OF SHELTER ISLAND; ROBERT T. CAMERON, individually and as Supervisor of the Town of Southampton; EDWARD V. ECKER, individually and as Supervisor of the Town of East Hampton; ROBERT B. VOJVODA, individually and as Supervisor of the Town of Riverhead; LESTER M. ALBERTSON, individually and as Supervisor of the Town of Southold, and EVANS K. GRIFFING, individually and as Supervisot of the Town of Shelter Island,

Appellants,

v.

I. WILLIAM BIANCHI, JR., and QUENTIN B. SAMMIS, and TOWN OF HUNTINGTON,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK

REPLY BRIEF TO MOTION TO AFFIRM AND DISMISS

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REPLY BRIEF TO MOTION TO AFFIRM AND DISMISS

I. The Question Is Substantial

In a Supplemental Brief of Defendants in our previously cited case of *Moody* v. *Flowers*, 256 F. Supp. 195, it was stated:

"* * * In 1960 in the 212 Standard Metropolitan Statistical Areas, covering only about 7% of the area of the United States, there were an estimated 16,976 'local governments.'[1] The number is increasing rapidly, despite the tendency toward consolidation of school districts.[2] 'One new unit of local government has been created somewhere in the United States each and every day for the past five years.'[3]

"Public authorities reach the size of the Port of New York Authority controlling billions of dollars of assets spread over two states, with power of condemnation and a bureaucracy of its own. * * *"
(Footnotes omitted)

In *Moody* v. *Flowers,* 256 F. Supp. 195 and again in *Sailors* v. *Board of Education of County of Kent,* 254 F. Supp. 17 (both on appeal to this Court doc. nos. 624 and 430), the majority of a three judge district court have called upon this Court to resolve this issue.

"We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that point. We are satisfied that we should not anticipate that the Supreme Court will reach that point."

Sailors v. *Bd. of Educ. County of Kent,* 254 F. Supp. 17, 29.

A prior appeal herein was dismissed for lack of jurisdiction, 382 U. S. 15 (1965). The dismissal has been, judicially, variously interpreted.

See dissent of Fox (D. J.) in *Sailors* v. *Bd. of Educ. County of Kent,* supra at p. 23, viewing the dismissal as approving reapportionment of local governments.

To the contra:

"The Supreme Court may have resolved the issue in favor of limiting the equal protection clause. Griffing *v.* Bianchi, 86 S. Ct. 52. * * * Perhaps the dispute is not over, but it would seem that the Supreme Court does not, at this time, see fit to extend the courts' involvement in this area."

Detroit Edison Co. v. *East China Township School Dist. No. 3,* 247 F. Supp. 296, 300, 301.

"* * * See also *Bianchi* v. *Griffing* (D. C. 1965) 238 F. Supp. 997, appeal dismissed for want of jurisdiction, 382 U. S. 15 * * * If the Equality Clause so requires, the United States Supreme Court has yet to say so and, thus, something more is required of courts like ours presented with such questions for decision than simple reference to Reynolds".

Brouwer v. *Bonkema,* 141 N. W. 2d 98, 107, 377 Mich. 637.

"* * * The exact question is already before a 3-judge court with jurisdiction retained (*Bianchi* v. *Griffing,* U. S. D. C. E. D. New York, 238 F. Supp. 997; appeal dismissed 382 U. S. 15, 86 S. Ct. 52, 15 L. Ed. 2d 11, and it is evident that such question will come to final determination by the Supreme Court, either in the course of the cited case or some other similarly pending case long before this case and its companion (Brouwer *v.* Bronkema) may be reviewed and decided by that Court."

Knudsen v. *Klevering,* 141 N. W. 2d 120, 122, 377 Mich. 671.

The courts, the local governments and the people need a definitive statement by this Court as to whether or not the federal equity power shall be applied under the Fourteenth Amendment to apportioning "local governments".

II. There Is No Issue of Racial Discrimination on This Appeal

The motion to affirm and dismiss extracts at p. 6 the identical quotation from *Cooper* v. *Aaron*, 358 U. S. 1 and *Gomillion* v. *Lightfoot*, 364 U. S. 339 employed by Johnson (D. J.) in his dissent in *Moody* v. *Flowers*, supra p. 203.

Neither case is applicable here, both involved racial discrimination and the majority decision in *Gomillion* is clearly premised on the Fifteenth Amendment.

III. Weighted Voting

Since filing the jurisdictional statement, we have encountered another New York decision, declaring "weighted voting" such as has been imposed here, and which is being further proposed to the voters, to be unconstitutional.

> *Davis* v. *Bd. of Suprs. of Clinton County*, 51 Misc. 2d. 347, 348 stating at p. 349:
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> "* * * The Federal and State cases on the subject do not authorize or transfer the *sole and exclusive voting power* of any governmental unit into the hands of the densely populated urban areas. * * * A fractional vote (weighted voting) could conceivably defranchise rural areas of any decisive vote. This is true in Clinton County. A vote without ability to effect a final result is an exercise in futility. Though our government recognizes majority rule, it, nevertheless protects the rights of the minority * * *."

CONCLUSION

The motion to Affirm and Dismiss should be denied and the Court should note probable jurisdiction.

Respectfully submitted,

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